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REPORT TO THE COMMITTEE
ON COMMERCE
UNITED STATES SENATE

Severance of Service-Connected
Disability Compensation for
a Certain World War II Veteran

Veterans Administration

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

MWD-75-101

gab/ga

JUNE 30, 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-154696

The Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate

Dear Mr. Chairman:

Pursuant to your November 12, 1974, request and later discussions with your office, we have reviewed the Veterans Administration (VA) service-connected disability case file on Mr. Joseph Leib. You expressed specific interest in obtaining

--a complete chronology of Mr. Leib's case from his induction into the service in May 1943 to VA's termination of his service connection in November 1961 and

--a report concerning the alleged disappearance of important Government documents from the VA case file on Mr. Leib.

Your office also asked us to determine (1) why Mr. Leib's compensation was abruptly terminated after about 16 years and (2) why VA made no attempt to collect any of the compensation it claims was erroneously paid to Mr. Leib during the 16 years.

The chronology on Mr. Leib's case, covering 1943-61, is enclosed as appendix I. We compiled it using only those documents in his case folder at VA. As agreed by your office, we have not evaluated nor drawn any conclusions from the data in the chronology.

Appendix II lists the documents allegedly missing from VA's records, as described in your November 12 letter, and our findings regarding each. We have determined that the listed documents are not in Mr. Leib's case file. We could not determine in all instances, however, (1) why the documents were missing, (2) whether VA had ever had them, (3) who may have been responsible for their being missing, or (4) whether they should have been in the file.

REASONS FOR SEVERANCE OF SERVICE CONNECTION

Mr. Leib's service connection was terminated as a result of a VA national review of all service-connected (compensation) World War II and Regular Establishment running award cases and all non-service-connected (pension) running award cases of veterans less than 55 years old. This review, made between December 1954 and June 1962, was to insure that VA regulations had been properly applied by the VA rating boards and that the veterans' claims had been soundly adjudicated. The review involved reexamining about 1.7 million cases; in about 33,500 of them, VA severed service connection.

VA attributed previous adjudication errors to the large volume of claims processed during the war years. Many awards were apparently processed on the basis of incomplete service records and without adequate examinations or development of evidence.

According to VA documents, Mr. Leib's case was reexamined in April 1961 as part of this review. VA had awarded him a 40-percent disability compensation rating in June 1946 because his disability had been adjudicated to be service connected. This decision had been based on a VA medical examination given Mr. Leib on May 8, 1946, and on the evidence of record. The VA rating board had observed that, although Mr. Leib's period of service had been less than 2 months, the report of examination at the time of his military induction had been negative for any disability or disease. In the May 1946 examination, VA had diagnosed Mr. Leib's disability as chronic and active arthritis of the spine.

Mr. Leib's rating was increased from 40 to 100 percent on October 27, 1947, because a VA medical examination on September 22 of that year showed that his condition had become greatly aggravated, rendering him unemployable. His condition was diagnosed as severe Marie-Strumpell arthritis of the dorsal lumbar spine and sacroiliac joints.

Upon reviewing the facts of Mr. Leib's case in April 1961, VA concluded that its previous determinations of service-connected disability had been in error.

VA recognized that Mr. Leib had been hospitalized 5 days after he had reported for active duty, suffering from low back pain. The diagnosis, according to documents in Mr. Leib's file, had been chronic, nonsuppurative,

severe, rheumatoid arthritis involving both sacroiliac joints. The VA rating board reviewing Mr. Leib's service connection in 1961 stated:

"At induction the veteran gave a history of rheumatism in hips and back, however, the examination showed no musculoskeletal [sic] defects. When hospitalized 6-16-43 the veteran gave a history of acute onset in 1935 for which he was hospitalized for 7 or 8 months. He had another episode 8 or 9 months before entering service which was relatively mild."

The rating board justified its proposed severance of service connection as follows:

"It is the determination of the Board that sound medical principles support the conclusion that the nature of the disease, its manifestations so close to induction, plus a long history of its existence prior to induction, constitute clear and unmistakable evidence that it was not incurred during his military service. Nothing is shown in the record that would support a finding that there was any incident or condition in service that would cause aggravation of his arthritis. The rating of 6-17-46 and all subsequent ratings granting service-connection for arthritis of the spine (now diagnosed Marie-Strumpell type) are clearly and unmistakably erroneous."

In a June 9, 1961, letter, VA notified Mr. Leib of the proposed decision to end his service connection and gave him 60 days to present any new evidence before the final decision was made. Mr. Leib appeared before a VA rating board on September 1, 1961. This board's October 13, 1961, final decision was that the evidence of record did not support his claim of service connection. VA terminated his benefits on November 30, 1961.

NONCOLLECTION OF ERRONEOUS
COMPENSATION PAYMENTS

Although it ruled that Mr. Leib's service connection was in error, VA did not require him to repay any benefits previously awarded. A VA official said that, when Mr. Leib's

service connection was severed, VA had no authority to create overpayments. According to another VA official, Administrator's Decision 544 had been used as authority for not establishing overpayments. That decision, dated November 13, 1943, pertained to the effective dates of discontinuance of payments in awards based on erroneous VA action and stated that:

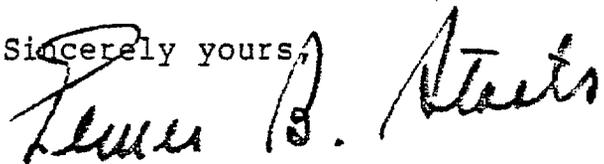
"In those cases in which the award is based upon either erroneous action or erroneous improper application of the law or administrative instructions, the ending or discontinuance date should be the date of last payment. In other words, while no overpayment should be created in such cases, such administrative action should be taken as will insure that no further payments are made."

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The information in this report was obtained through discussions with VA officials and a review of VA records concerning Mr. Joseph Leib. As your office agreed, we did not discuss any of this information with Mr. Leib. Also, as instructed by your office, we did not obtain formal comments from VA.

Because of the sensitive nature of the information in this report, which concerns only your office and Mr. Leib, we plan no further distribution of this report unless specifically requested by your office.

Sincerely yours,



Comptroller General
of the United States

CHRONOLOGY OF EVENTS REGARDING THE ESTABLISHMENT
AND TERMINATION OF SERVICE-CONNECTED DISABILITY

COMPENSATION FOR MR. JOSEPH LEIB

(USING ONLY DOCUMENTS IN VA'S CASE FILE)

| <u>Date</u> | <u>Description of events</u> |
|----------------|---|
| April 23, 1943 | Mr. Leib was given a preinduction physical examination at Washington's Garfield Hospital for the Selective Service Board. |
| May 28, 1943 | He was inducted into the military service and assigned to Company D, 1303d Service Unit, Camp Lee, Virginia. |
| June 11, 1943 | He reported for active duty. |
| June 16, 1943 | He was admitted, ambulatory, to the station hospital at Camp Lee, complaining of pains across the hips. A physical examination, including serology and sedimentation rate tests, was given. The Camp Lee station hospital requested (1) X-rays of the anterior pituitary and lateral views of the lumbar and dorsal spine and (2) the following tests: urinalysis, white blood cell count, differential (type of blood count), and a basal metabolism rate. |
| June 18, 1943 | A basal metabolism test was given and the X-rays requested 2 days earlier were interpreted. |
| June 19, 1943 | The Camp Lee hospital requested X-rays of cone view of both sacroiliac joints. |
| June 21, 1943 | Heat and massage to the lower back and sacroiliac area, fracture board, aspirin, and sodium bicarbonate were prescribed. |
| June 22, 1943 | X-rays requested 3 days earlier were interpreted and Mr. Leib was given an electrocardiogram and sedimentation rate test. The Camp Lee station hospital requested genitourinary; dental; and eyes, ears, nose, and throat consultations as well as a white blood cell count and a differential. |

| <u>Date</u> | <u>Description of events</u> |
|-----------------|--|
| June 24, 1943 | X-rays were requested of single cone view of sacroiliac joints. Genitourinary consultation requested 2 days earlier was given. |
| June 26, 1943 | Nurses' notes indicate that Mr. Leib was taken to X-ray; however, VA's case file has no record of an X-ray report for this date. |
| June 27, 1943 | Nurses' notes again indicate that he was taken to X-ray; however, again the case file has no record of an X-ray report for this date. |
| June 28, 1943 | An electrocardiogram was given and X-rays requested 4 days earlier were interpreted. |
| June 29, 1943 | The station hospital requested an X-ray of Mr. Leib's chest. |
| July 1, 1943 | The Certificate of Disability for Discharge Board ruled on Mr. Leib's case and he was transferred to the Certificate of Disability for Discharge Ward of the Camp Lee hospital. He signed a statement electing not to file a claim with VA at that time. |
| July 3, 1943 | A Board of Veterans Appeals' Decision dated August 14, 1962, indicates that a chest X-ray was taken of Mr. Leib on July 3, 1943; however, VA's case file has no record of a chest X-ray taken of him on that date. Available documentation does indicate that a chest X-ray had been requested for Mr. Leib on June 29 and that such an X-ray was interpreted on July 4. |
| July 10, 1943 | Mr. Leib was discharged from service on a Certificate of Disability for Discharge because of chronic rheumatoid arthritis of sacroiliac joints. |
| August 5, 1943 | His medical records were sent from Camp Lee to the VA facility at Roanoke, Virginia. |
| August 7, 1943 | The medical records were received at Roanoke. |
| October 5, 1945 | VA received his application for pension and compensation dated September 1945. |

| <u>Date</u> | <u>Description of events</u> |
|---------------------------|--|
| November 2, 1945 | VA acknowledged the application for benefits. |
| May 8 to June 3, 1946 | VA gave Mr. Leib a physical examination in Washington, D.C. |
| May 8, 1946 | VA requested an X-ray of the lumbar-sacral spine. |
| May 27, 1946 | The X-ray requested on May 8 was interpreted. |
| June 6, 1946 | Mr. Leib was informed by letter that his records had been consolidated under file number C 5 932 964 and that his previous file number, C 3 289 752, had been canceled. (VA received an application for benefits from Mr. Leib in October 1945, but he did not indicate his original C-number on the application. VA assigned Mr. Leib number C 5 932 964 and later discovered the prior issuance of the original C-number.) |
| June 17, 1946 | The VA rating board assigned a 40-percent disability rating effective October 5, 1945, based on the May 8, 1946, physical examination and the evidence of record that the Selective Service's "Report of Examination and Induction" was negative for any disability or disease. His disability was diagnosed as active, chronic arthritis of the spine. |
| January 22 to 31, 1947 | VA gave him a physical examination. |
| January 22, 1947 | The Board of Veterans Appeals' Decision dated August 14, 1962, indicated that Mr. Leib had filed an application for outpatient treatment for his spine on this date, but the case file contains no documentation of this. |
| January 30, 1947 | VA requested X-rays of the thoracic, lumbar, and sacral spine. |
| February 7, 1947 | Mr. Leib's claim was reviewed based on VA's January 22, 1947, physical examination. The June 17, 1946, rating was confirmed and continued to March 31, 1946. The rating |

| <u>Date</u> | <u>Description of events</u> |
|--------------------|--|
| | board gave Mr. Leib a new 40-percent compensation rating for chronic arthritis of the spine effective April 1, 1946. This new rating merely reflected the implementation of a new VA Schedule for Rating Disabilities which became effective April 1, 1946, and which replaced the 1933 schedule. |
| February 17, 1947 | A radiographic report dated August 30, 1961, indicated that an X-ray was taken of Mr. Leib's thoracic and lumbar spine on February 17, 1947; however, the case file contained no X-ray report for this date. |
| February 20, 1947 | X-rays of Mr. Leib's thoracic, lumbar, and sacral spine requested on January 30 were interpreted. |
| March 1947 | The Board of Veterans Appeals' Decision dated May 3, 1963, said Mr. Leib's outpatient hospital records indicated that he was authorized to receive a back brace in this month (no specific date was given). The VA case file, however, contains no documentation on such an authorization. |
| June 19, 1947 | A VA rating board reviewed the case based on a letter from Mr. Leib dated, according to the board, March 18, 1947. The March 18 letter, however, is not in the VA case file. (See app. II, p. 11.) The board amended the rating of June 17, 1946, to reflect the new VA Schedule for Rating Disabilities and the February 7, 1947, rating because the board did not indicate the disability diagnostic code, as contained in the rating schedule. The 40-percent disability rating, however, was confirmed and continued and the disability was diagnosed as chronic arthritis of the spine. |
| September 21, 1947 | A radiographic report dated August 30, 1961, indicated that an X-ray was taken of Mr. Leib's thoracic and lumbar spine on September 21, 1947; however, the VA case file contained no X-ray report for this date. |

| <u>Date</u> | <u>Description of events</u> |
|--------------------|---|
| September 22, 1947 | VA gave Mr. Leib a physical examination and took X-rays of the anterior pituitary and lateral dorsal lumbar spine and anterior pituitary pelvis. |
| October 27, 1947 | The VA rating board increased Mr. Leib's disability to 100 percent, effective September 22, 1947, on the basis of the physical examination given that day. The rating sheet indicated that his service-incurred condition had become aggravated and rendered him unemployable since April 1947. The disability was diagnosed as severe Marie-Strumpell arthritis of the dorsal lumbar spine and sacroiliac joints. |
| May 1, 1949 | An orthopedic examination was requested. |
| May 2, 1949 | An X-ray was taken of entire spine, pelvis, shoulder, and hip joints. |
| May 2 to 17, 1949 | VA gave Mr. Leib a physical examination. |
| April 6, 1951 | VA gave him another physical examination. |
| April 16, 1951 | A VA rating board reviewed Mr. Leib's case based on the April 6, 1951, physical examination and confirmed the 100-percent rating. |
| January 8, 1957 | An August 30, 1961, radiographic report indicated that an X-ray was taken of Mr. Leib's thoracic and lumbar spine on January 8, 1957; however, VA's case file contained no X-ray report for this date. |
| April 13, 1961 | Mr. Leib's claim was reviewed as part of VA's national review of running awards (1954-62). The VA rating board proposed that his service connection be severed, stating that granting service connection to Mr. Leib for arthritis of the spine was clearly and unmistakably erroneous because the evidence of record showed that the disease existed before induction and nothing had occurred in the service to aggravate it. |

| <u>Date</u> | <u>Description of events</u> |
|--------------------|--|
| June 9, 1961 | Mr. Leib was notified by letter that, as a result of a review of his case, service connection for his arthritic condition was clearly in error and that VA was considering severing his service connection. |
| August 30, 1961 | VA reviewed X-rays taken February 17, 1947; September 21, 1947; May 2, 1949; and January 8, 1957. |
| September 1, 1961 | Mr. Leib appeared at a hearing before a VA rating board. |
| September 27, 1961 | VA gave him another physical examination and requested X-rays of his chest and of his dorsal and lumbar spine, both anterior pituitary and lateral, in flexed and extended positions and 45 degrees oblique from both angles. |
| October 13, 1961 | The rating board changed the June 17, 1946, service-connected rating and all subsequent ratings to a non-service-connected rating, <u>1</u> / stating that injury to the spine while in military service was not shown by the evidence of record. |
| November 22, 1961 | VA notified Mr. Leib that it could find no basis for any change in its decision to discontinue service connection for his arthritis. VA informed him that he would no longer be entitled to outpatient hospital treatment and that his payments would be terminated effective November 30, 1961. |
| November 30, 1961 | Benefits to Mr. Leib were terminated. |

1/This rating did not entitle Mr. Leib to non-service-connected benefits (pension) because he did not meet the minimum requirements for time in service.

REPORT ON RECORDS ALLEGEDLY MISSING
FROM VA'S CASE FILE ON MR. JOSEPH LEIB

(AS CITED IN SENATOR MAGNUSON'S

NOVEMBER 12, 1974, LETTER)

| <u>Description of document or item allegedly missing (note a)</u> | <u>Is document or item in case file?</u> | <u>Comments</u> |
|---|--|--|
| Report of Investigation Form #51 | No | No indication as to why the document is missing. |
| Morning reports of Com- pany D, 1303d Service Unit, Camp Lee, Virginia, from June 16 to July 10, 1943 | No | Army correspondence indi- cates that the morning reports of Company D for the years 1941, 1942, and 1943 were mi- crofilmed in 1951. At that time, some morning reports, including those for June and July 1943, were missing. The orig- inal morning reports were held at least 2 years after being filmed and then destroyed. |
| Sick reports of Company D, 1303d Service Unit, Camp Lee, from June 16 to July 10, 1943 | No | Army correspondence shows that the sick reports for this period are not available. |
| Mr. Leib's registered let- ter dated March 22, 1947 (Senator Magnuson's letter indicates that this let- ter was dated March 22; VA records show the date to be March 18) | No | VA's rating worksheet dated June 19, 1947, indicates that the letter existed at one time. No reason could be determined as to why the material is missing. |
| Evidence of Mr. Leib's June 16, 1943, appointment to the officer candidate school at Fort Washington, Maryland, by Secretary of War Henry L. Stimson (Spe- cial Order 143, paragraph 5) | No | According to the Board of Veterans Appeals' Deci- sion dated May 3, 1963, that portion of the mis- sing special order of June 16, 1943, pertaining to Mr. Leib's appointment to the officer candidate |

| Description of document or item allegedly <u>missing (note a)</u> | Is document or item in <u>case file?</u> | <u>Comments</u> |
|---|--|--|
| Medical examination re- ports made several days before Mr. Leib's in- jury | No | school was rescinded 2 days later due to the discovery that he was in the hospital. VA's case file shows that the only medical examina- tion report dated a few days before Mr. Leib's admission to station hos- pital is the "Report of Physical Examination and Induction," dated April 23, 1943. |
| Chest X-ray film taken at Camp Lee in 1943 to prove that he was not in a spine cast at time of discharge | No | Available documentation indicates that a chest X-ray had been requested for Mr. Leib on June 29, 1943, and that the X-ray was interpreted on July 4. The interpretation stated only "negative." The film itself is not in the case file, al- though the Board of Vet- erans Appeals' Decision dated August 14, 1962, stated that the X-ray was available for review and had been read in con- nection with the appeal. |
| Mr. Leib claims that Corporal Waverly W. Starley, ASN 3196648, witnessed his alleged injury on June 16, 1943 | No | Correspondence in VA's "Report of Investiga- tion Regarding Alleged Irregularities In Mr. Joseph Leib's Claim" showed that Department of the Army files indi- cated that Corporal Starley was a hospital patient from May 17, 1943, until his death from a hemorrhage con- gestion of both lungs on June 17, 1943. |

| Description of document or item allegedly missing (note a) | Is document or item in case file? | <u>Comments</u> |
|--|---|---|
| Special order showing that the Army discharge board which signed Mr. Leib's discharge was a duly constituted board | No | VA's case file contains no evidence of a special order. Correspondence in VA's "Report of Investigation Regarding Alleged Irregularities in Mr. Joseph Leib's Claim" indicated that the record set of special orders at Camp Lee for the period concerned was no longer available, having been destroyed (date unknown) in accordance with the approved 15-year disposal standard established for such records. |
| Official documents connected with the injury to Mr. Leib's aorta | No | A radiographic report dated October 3, 1961, showing that Mr. Leib's aorta was tortuous is the only available document in VA's case file referring to this subject. |
| Mt. Alto VA Hospital (Washington, D.C.) records from 1943 to 1946 | No | A VA official informed us that individuals' hospital records are not maintained beyond 15 years. |

a/To provide an explanation about those items specified in the Senator's November 12, 1974, letter as missing from VA's case file, we assumed that they did exist at one time. We could only verify, however, whether or not the cited items were in VA's case file at the time of our review. We could not determine in all instances why these documents were missing, whether they were ever in the case file, who may have been responsible for their being missing, or whether they should have been in the file.